



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 31, 1996

Mr. Douglas L. Huth
Assistant General Counsel
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

QR96-0137

Dear Mr. Huth:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 36994.

The Texas Department of Agriculture (the "department") received a request for information concerning a specific complaint. You state that you have released the requested information except for portions that reveal medical information. You contend that this information is excepted from required public disclosure under section 552.101 of the Government Code as information made confidential by law.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim the information marked for our consideration is made confidential by the Medical Practice Act ("MPA"), V.T.C.S. article 4495b. Section 5.08 of the MPA provides, in part:

(a) Communications *between one licensed to practice medicine*, relative to or in connection with any professional services as a physician to a patient, is confidential and privileged and may not be disclosed except as provided in this section.

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are *created or maintained by a physician* are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the

persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained. [Emphasis added.]

Information about a patient created or maintained by a physician is excepted from disclosure by section 552.101 of the Government Code as information deemed confidential section 5.08 of the MPA. Attorney General Opinion MW-381 (1981); Open Records Decision No. 546 (1990) at 1. However, information that is received directly from the "patient" is not generated by a physician and is therefore not covered by section 5.08. Attorney General Opinion JM-229 (1984) (only those portions of personnel files actually prepared by physician are "medical records" under V.T.C.S. art. 4495b; medical *history* information furnished by employee to his employer is not "medical record" under V.T.C.S. art. 4495b); Open Records Decision No. 343 (1982) (where hospital daily log is not prepared by physician, confidentiality provisions of V.T.C.S. art. 4495b are not applicable). Similarly, information received from the patient's representative is not confidential under section 5.08.

We have reviewed the information you submitted for our consideration. Some of the records appear on their face to have been created or maintained by a physician, reveal information from a record created or maintained by a physician, or reveal communications from a physician. This information must be withheld as confidential information pursuant to the MPA. However, some information appears on its face to have been received by the department directly from the complainant or the complainant's representative. This information may not be withheld under section 552.101. Moreover, the departmental memorandum attached to the physician's records may only be withheld to the extent that it reveals information obtained from a record created or maintained by a physician; factual recitation of the complaint, information received directly from the complainant or his representative, and any other information may not be withheld as information made confidential by law.

Although medical information provided by the complainant is not protected by section 5.08, we must consider whether it is excepted from disclosure under section 552.101 by the doctrine of common-law privacy. Information may be withheld on the basis of common-law privacy if it is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and there is no legitimate public interest in its disclosure. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision Nos. 562 (1990) at 9, 561 (1990) at 5, 554 (1990) at 3. *But see* Attorney General Opinion JM-229 (1984) (only specific illness, injury, and examination facts are excepted from disclosure under common-law privacy, unless information is within scope of V.T.C.S. art. 4495b); Open Records Decision No. 478 (1987) (not all medically related information is protected by common-law privacy). The medical information furnished the department by the complainant and the complainant's representative is not highly intimate or embarrassing. *See, e.g.*, Open Records Decision No. 343 (1982) at 1-2. Consequently,

any medical information that the department received directly from the complainant or the complainant's representative must be released. We have marked the information that must be withheld under the MPA. The remaining information must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal flourish extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/LBC/ch

Ref: ID# 36994

Enclosures: Submitted documents

cc: Mr. Richard Edwards
Attorney at Law
P.O. Box 337
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(w/o enclosures)